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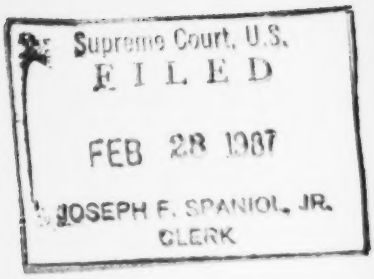

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1986 TERM

IDA MAE McQUADE,
APPELLEE

vs.

G. DANIEL WOODRING.
HOPE P. WOODRING,
t/d/b/a/ RISING SUN
COMMUNITY SERVICES,
APPELLANTS

ON APPEAL FROM THE SUPREME COURT
OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

G. DANIEL WOODRING. PRO SE
P.O. BOX 627
1-80 & PA 150
MILESBURG. PA. 16853

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

STATEMENT OF THE QUESTIONS

1) Did Prothonotary of Centre County, after receiving appeal and docketing same within appeal period, have authority to return said filing fee and render said filing null and void, and in so doing was there a breakdown in the operations of the court?

2) Where petitioners are not represented by counsel and are not knowledgeable about ways of the court and legal proceedings, is matter-of-fact discussion of an "issue" in their petition and testimony, and in testimony and brief of opposing counsel, sufficient to raise such an issue?

3) Where a material fact brought out in petitioners' petition and in sworn testimony collaborated by testimony of opposing counsel would alter the outcome of a hearing should such fact be raised as an "issue", is the court obliged to recognize such fact as an issue and rule on it in order to pro-

tect petitioners' constitutional rights of due process of law?

4) Where a material fact brought out in sworn testimony by both parties to a dispute describes an act of an officer(s) of the court which is in technical violation of statute and such violation is sufficient to alter the outcome of said hearing should such violation be made an issue, is the party injured by said violation entitled to due process guarantees even if the issue is not raised?

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REFERENCES TO OPINIONS DELIVERED IN LOWER COURTS

The Court of Common Pleas of Centre County cited the following case in its opinion dated January 23, 1985:

Dion v. Ford Motor Co.,64 D&C 2nd 245, aff'd 228 Super. Ct. 743, 311 A2nd 329

GROUNDS FOR JURISDICTION OF SUPREME COURT OF THE UNITED STATES

The Supreme Court of Pennsylvania denied Appellant's Petition for Allowance of Appeal on October 30, 1986 and notified parties to the dispute by letter dated November 10, 1986.

This petition for Writ of Certiorari comes to this Court under the statuatory provisions of 28 USCS 1257(3) which states in part:

> Final judgements or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> > (3)by writ of certiorari ... where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Additionally, determination is sought under the provisions of 28 USCS 2106 which states:

> The Supreme Court or any other court of appellate jurisdiction may affirm,

modify, vacate, set aside or reverse any judgement, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgement, decree, or order.or require such further proceedings to be had as may be just under the circumstances.

CONSTITUTIONAL PROVISIONS

The provisions of the 14th Amendment to the Constitution of the United States are invoked herein. Such Ammendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

At the conclusion of the arbitration hearing when Plaintiff was awarded on April 12, 1984 a judgement in the amount of $10,219.90. Defendants were determined to appeal since the award was so much greater than the cost of the entire heating system Defendants installed in Plaintiff's home ($7,976.60).

A substantial part of that system included conversion of Plaintiff's boiler from inefficient steam to hot water, which is universally recognized by plumbing and heating contractors, energy experts, boiler manufacturers and the U.S. Department of Energy as considerablly more efficient - 15% to 17% on the average - than steam. That part of the system performed admirably. Plaintiff's "expert witness", however, was able to convince the arbitrators that Plaintiff was further damaged by this conversion, and the arbitrators awarded

her $1,400.00 to reconvert the boiler system back to steam.

A number of expensive controls and devices - expansion tank, pressure regulator, aquastat, circulators, etc. -as well as return piping from the radiators to the boiler and a substantial amount of labor, the total estimated value of which was $3,020 (estimate provided by competitive plumbing and heating contractor and allowed by the trial court) were provided by Defendants.

Attempts to settle the dispute were not immediately fruitful and on May 14, 1984, the final day for filing appeal, in the absence of settlement, the appeal was filed by defense counsel and the fee paid with his firm's check. Defendants' counsel, however, arranged with an officer(s) of the court - either the prothonatary or the court administrator or both - to have the fee refunded if settlement could be

reached by May 16, 1984 - two days beyond the filing deadline.

Defendants' counsel purported to have achieved settlement along the lines discussed with Defendants and retrieved his firms check from the court prior to 5:00 P.M. on May 16, 1984. He subsequently withdrew the appeal.

Defendants received a copy of a "Settlement Agreement" drafted by Plaintiff's counsel on August 30, 1984, 3 1/2 months after said dispute was settled by reputed verbal agreement. This written agreement did not require the return of all the goods an important part of Defendants' settlement demands. Nor did it provide for compensation for benefits retained by plaintiff as required by law.

Objecting to the absense of such proviso, defendants refused to sign the agreement and were notified by their counsel on September 4, 1984 of Plaintiff's refusal to

include that one major demand required (in May) by Defendants for settlement.

Defendants filed their Petition Nunc Pro Tunc on September 13, 1984.

This appeal comes before the appellate courts by reason of a denial of Defendants' Petition of Appeal Nunc Pro Tunc by the Centre County Court of Common Pleas on October 16, 1984.

Defendants filed appeal to the Superior Court of Pennsylvania on Oct. 23, 1984. Appellants /Defendants also petitioned the court for a remand of their case "to allow important relevant documents to be introduced in the lower court and to provide for full and proper clarification of the roles of the officers of the trial court in the de facto extension of the deadline for filing of the appeal, as well as to take such additional testimony as would benefit disposition of the case."

The petition for remand was denied by order dated March 29, 1985. Three questions were advanced by Defendants for argument before the Superior Court:

1) Did misrepresentations and other conduct on the part of Plaintiff constitute fraud such as should have caused the Court to allow Appeal Nunc Pro Tunc?

2) Did conduct of Counsel for Defendants and Plaintiff, working in consort without the full knowledge or agreement of Defendants, constitute fraud against Defendants which should have given rise to Appeal Nunc Pro Tunc.

3) Did Prothonotary of Centre County, after receiving appeal and docketing same within the appeal period, have authority after said filing to return said filing fee and render said filing null and void, and in so doing was there a breakdown in the operations of the Court?

Questions 1 and 2 above were considered and rejected on Dec. 13, 1985 by the Superior Court as "meritless" whereas Question 3 was simply dismissed as not having been raised in the lower court.

A Petition for Allowance of Appeal was filed with the Supreme Court of Pennsylvania on January 10, 1986. Again Defendants requested a remand for the same reasons outlined above. That court denied said Petition on October 30, 1986, notifying all parties by letter dated November 10, 1986.

FEDERAL QUESTION RAISED

The failure to recognize issues presented by Defendants to the Court of Commom Pleas of Centre County was plain error on the part of the trial court. But such issues brought to the specific attention of the Superior Court of Pennsylvania on appeal by Appellents should have been remanded after such Petition for Remand was appropriately presented to such court for the reasons stated herein; and that court's refusal to rule on issue #3 as quoted verbatim in the Statement of the Case herein was the act complained of in Appellants' Petitition for Allowance of Appeal denied by the Pennsylvania Supreme Court.

We believe that the Superior Court's denial of Appellant's Petition for Remand and further refusal to rule on Issue #3 when presented in arguement before said Court was a denial of due process of law and that it then became appropriate to com-

plain of such act on appeal to the Supreme Court of Pennsylvania.

Such complaint was developed in Appellants' Petition for Allowance of Appeal embodied in the section entitled Reasons Relied Upon for Allowance of Appeal in the following statement:

"No consideration was asked of the [Superior] Court by Defendants / Appellants because of their appearance pro se. But, those appealing pro se - for whatever reason - should not be denied due process simply because they lack sufficient training and experience to make legal argument in the esoteric language of the law. [For the Superior court] to dismiss this appeal, to deny relief, virtually without comment, is to deny due process."

And, In the Statement of the Questions invoked in the same section is this statement:

"Consequent to these arguments, Appel-

lants develop the thesis that they were ineffective in earlier proceedings and thus were denied due process." These concepts are developed further on argument herein.

While the action of the trial court which led to Appeal was a matter of Pennsylvania state law and the lack of recognition of issue #3 was plain error on the part of said trial court, we believe that ratification of said action by the Superior Court, brought into play the federal question addressed herein above and that it became apparent after said action by the court that no "common-sense" or amateurish legal argument could convince the Court to rule on issue #3 - and the Superior Court's refusal to remand the case to the trial court where the issues could be developed with greater force of law, even though ample precedence existed for so doing, was because of petitioners self-prepared brief and appearance pro se before the court.

ARGUMENT

Plaintiff's deceptive attempts to retain benefits bestowed upon her by Defendants without compensation as required by law and in violation of the provisions of the award of the arbitrators is the root cause of this conflict.

Plaintiff argued that the basis for their drafting of the agreement was embodied in a letter to them from the Defendants' counsel Kistler dated May 15, 1984, a letter which Defendants viewed for the first time on October 15, 1984 when handed a copy by Plaintiff's counsel at the hearing on Defendants Petition for Appeal Nunc Pro Tunc. We demonstrated in our brief and in our oral argument to the Superior Court that testimony by the Plaintiff to the lower court contradicted - rather than supported- her arguement that she didn't misrepresent.

The May 15 letter was but one letter in correspondence leading to the purported set-

tlement. Letters from both parties discussing "salvageable items" and items of "salvageable value" - terms more in line with Defendants' requirements for settlement, are not in the record, and were the "documents" referred to in Defendant's Petition for Remand.

Contrary to opposing Counsel's allegations, it is probable that he was more aware of the arrangements with the trial court to refund the filing fee if settlement could be reached after said final time for filing than were the Defendants. Plaintiff averred that arrangements were made with the Court Administrator - rather than the Prothonotary - in brief and in oral testimony at the hearing. And, although it is likely that defense counsel induced said officer(s) of the court to agree to refund the fee, there is little question that both counsel participated, either actively or passively, in the act.

Plaintiff's counsel Stover refers to the governing statutes in his brief and cites several cases to support his argument that "Generally where a Statute fixes the time within which appeal may be taken. the time may not be extended as a matter of indulgence or grace." He apparently believed that such conduct as that of the defense counsel and said offficer(s) of the court was acceptable under the law or it seems unlikely that he would have alluded to it in such a mater-of-fact manner.

These are learned men of the law? Appellants only became aware of the fact that said act was a violation of statute just days before we prepared our petition.

If, under the law, litigants are held liable for the illicit acts of their counsel. then it would certainly be true that we as Appellants would be guilty of laches. But, Appellants neither suggested nor initiated any negotiations with the Prothonatory

or the Court Administrator (or both) to refund the filing fee if settlement could be reached after said final time for filing, nor did we approve, disapprove, or participate in such negotiations in any way whatsoever. Appellants had little expectations of settlement and wanted to appeal. In fact, Appellants wanted the initial case to be heard before a judge rather than a board of Arbitrators, not wanting to incur the costs of two hearings.

In the end, this "well intentioned " act by the court worked to the detriment of Appellants, depriving us of our appeal rights. We would not have permitted the withdrawel of our appeal without an agreement for settlement. Had the court refused to participate in this act and abided by the statute, refusing to refund the filing fee after paid, our appeal would have remained intact and any settlement secured after that time would necessarily have been re-

duced to writing.

It is notable that a Justice of the Superior Court panel was quick to respond to Appellants' oral argument about the event as having been done as a "favor" to Appellants. That expression of impatience perhaps summarized the panel's feelings. It may have been convenient that the Appellants, in the view of the panel, had not raised the issue in the lower court and therefore a ruling on it could be avoided.

Prior to the arbitration hearing in April 1984, Appellants exposure to the legal system was by way of television programs like Peoples' court. Like Judge Wapner on Peoples Court, the arbitrators asked many questions throughout the proceedings. But, Judge Wagner doesn't need every issue spelled out for him. He "picks-up" on the issues when the facts are presented by the litigants.

And that is what Appellants expected

when we opted for a non-antagonistic approch to Nunc Pro Tunc. We had just been made aware of the fact that the refunding of the filing fee was a violation of statute. We carefully worded the petition to make reference to it, but avoided making any judgement about it, assuming that such judgement was within the purview of the court.... that the judge would "pick-up" on it. We assumed that facts and issues were synonymous.

This may seem like a naive question but, when does a material fact become an issue?... When a litigant states in profound terms "Your Honor, this fact is an issue!"

If a judge is a learned man of the law, as voters presume he is when he is elected, why shouldn't he/she be expected to recognize issues when they are presented as material facts in sworn testimony? Shouldn't "equal protection of the laws" be construed to mean that a court is obliged to protect

the rights of all litigants, even those not represented by counsel?

Assume, arguendo, that a material fact is a statuatory violation by an officer of the court of such significance - say perjury or larceny - that it could hardly be ignored. Would a court still require that an issue be made of it for such act to impact upon the proceedings? To put into other words, how serious would a statuatory violation need to be to become recognized by a court as an issue without a litigant's so pleading? Or, is it just not possible under any jurisdictional rules of civil procedure for that to happen?

The due process guarantees of the 5th and 14th Ammendments of the Constitution are noble, but from the point-of-view of litigants who keep losing for no want of due dilligence, these concepts are largely abstract, attainable only with significant sums of money. If it costs $25,000 in

legal fees and court costs to deter being deprived of $25,000 in property, how can due process be of benefit?

Those with high incomes can afford the costs and indigents in criminal cases can proceed in forma pauperis with court appointed counsel. But many of us cannot afford the high legal costs accrued in civil cases.

Proceeding pro se is extremely difficult under the law. It is an approach which, at best, is merely tolerated. The maxim that one trained in the law should not represent oneself and one not trained in the law can not represent oneself allows no charity for the foolish.

Yet, for some, pro se is the only financially feasible approach to justice. But, in a system that provides no tangible support, no help, no information on court procedures, no invitation for use of of law

libraries. no guidance, no advice and no assistance whatsoever.... there is no equal protection under the laws. And there can be no due process of law for pro se petitioners until there is equal access to the legal system.

It should be required that trial courts have the duty to inform litigants - particularly defendants - in civil cases - that they have the right of counsel or the right to forgo counsel, that if they choose to proceed pro se they have the right to the use of the law libraries of the county where domiciled, and that they have a right to receive basic instruction in the law by a clerk of the court where the action is initiated: such instruction to include a basic overview of the rules of civil procedure: pleadings, evidence, preserving issues for appeal, case law, etc.

If the case of any given litigant represented by counsel can be remanded to "take

additional evidence," to "supplement their material," to "conduct evidentary hearings," to "enter documents into evidence", to "amend complaints", to "find facts", and to "raise issues not raised at the trial court level", why can't the case of one who represents himself be so remanded when he has filed timely petitions to do so, and has adequate basis for such remand? Attorneys, learned in the law, can make mistakes and be given another chance?

This court said in Hormel v. Helvering 312 U.S. 552, "the general rule that an Appellate Court does not give consideration to issues not raised below should not be applied where the obvious result would be a plain miscarriage of justice." And in Singleton v. Wulff, 428 U.S. 106 "There are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt or where injustice might otherwise result..."

In Kennedy et al v. Silas Mason Co., 334 U.S. 249, this court held that issue not pleaded in either court below "and appears fully presented for the first time" in this court would be remanded for reconsideration and amplification of the record".

The similarities between the instant case and an earlier Pennsylvania case are notable:

> "The only problem is that this averment of fact is made in brief at the appellate level rather than in papers opposing the motion in the lower court. But, [i]f the appellate court becomes convinced that the appellant, although acting in good faith, has somehow or other failed to raise at the trial court level a genuine factual issue that is, nevertheless, present in the case, it should make such a disposition of the appeal as will permit him to do so."
>
> McFadden v. American Oil Co.
> 215 Pa. Super. 44

The primary difference between the two disputes is that Appellants herein did present their material facts to the trial court, such court failing to recognize

such facts as issues, and the Superior Court refusing to recognize such facts as issues.

And other remanded Pennsylvania cases of interest include: Anmuth v Chagen, 295 Pa. Super 440; Huber v. Wagner, 284 Pa. Super. 133; Scranton Coal Co. v. Scranton, 314 Pa. 262; Mc Gregor's Estate v. Young Tp., 350 Pa. 93.

And. finally, this court has the power to notice errors not brought to its attention:

> [U.S. Supreme Court] may, in public interest, of its own motion, notice errors to which no exception has been taken, if errors are obvious, or if they otherwise affect fairness, integrity, or public reputation of judicial proceedings.
>
> Sibler v. United States
> 370 U.S. 717

CONCLUSION

In fairness and in the interest of public respect for the judiciary, this case should be remanded to the Superior Court of Pennsylvania with instructions to either -and preferably- (1) further remand to the Court of Common Pleas of Centre County for a new hearing on Appellants' Petition for Appeal Nunc Pro Tunc or (2) rule on Issue # 3 as it was originally pleaded in the Superior Court.

Accordingly, we, as Appellants, pray that this Honorable Court grant our Petition for Writ of Certiorari For Writ of Error to the Supreme Court of Pennsylvania.

APPENDIX

SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

Mildred E. Williamson 434 Main Capitol Bld.
Deputy Prothonotary P.O.Box 624
Harrisburg, Penna. 17108
(717) 787-6181

November 10, 1986

G. Daniel Woodring
P.O.Box 627
Milesburg, Pa. 16853

Re: Ida Mae McQuade v. G. Daniel Woodring, Hope P. Woodring, t/d/b/a Rising Sun Community Services, Petitioners
No. 9 M. D. Allocator Docket 1986

Dear Mr. Woodring:

This is to advise that on October 30, 1986 the Supreme Court entered its Order DENYING the Petition for Allowance of Appeal filed in the above-captioned matter.

Very truly yours,

Mildred E. Williamson
Deputy Prothonotary

MEW/spb
cc: Jeffrey W. Stover, Esquire
President Judge - Centre County
(No. 83-659)

IDA MAE McQUADE. Appellee : IN THE SUPERIOR
: COURT OF
vs. : PENNSYLVANIA
:
G.DANIEL WOODRING, :
HOPE P. WOODRING. T/D/B/A :
RISING SUN COMM. SERVICES.: No. 00578 Har-
Appellants : risburg 1984

Appeal from the Order of the Court of Common Pleas of Centre County, Civil. at No. 83-659.

BEFORE: ROWLEY. OLSZEWSKI AND MONTEMURO. JJ.

MEMORANDUM: FILED: December 13. 1985

On April 12. 1984. a panel of arbirtrators entered an award in favor of plaintiff-appellee in the amount of $10.219.90 with interest and costs. On May 14. 1984. appellants timely filed a "praecipe for appeal from arbitrators' award". However. one week later. appellants filed a "praecipe for withdrawal of appeal" and recovered their filing fee from the county prothonotary. Appelllants herein appeal pro se from an October 16. 1984 order of the Court of Common Pleas of Centre County denying their petition for an appeal nunc pro tunc.

In their brief, appellants set forth the following statement of questions involved:

> 1. Did misrepresentation and other conduct on the part of Plaintiff constitute fraud such as should have caused the court to allow Appeal Nunc Pro Tunc?
>
> 2. Did conduct of Defendants' and Plaintiff's counsel, working in consort without the full knowledge or agreement of Defendants, constitute fraud against Defendants which should have given rise to Appeal Nunc Pro Tunc?
>
> 3. Did Prothonotary of Centre County, after receiving Appeal and docketing of same within the Appeal period, have authority after said filing to return said filing fee and render said filing null and void, and in so doing was there a breakdown in the operations of the Court?

Appellants' brief at 3.

With regard to the first two issues raised by appellants, we have carefully considered their arguments and we find them to be meritless. In its opinion of January 23, 1985, the court below adequately addressed and correctly disposed of these issues and we see no need for further comment.

With regard to the remaining issue raised by appellants, we note simply the general rule that, "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa. R.A.P. 302(a).

Accordingly, we affirm the order of the court below. Order affirmed.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY. PENNSYLVANIA CIVIL ACTION - LAW

IDA MAE McQUADE. Plaintiff	:	
v.	:	No. 83-659
G.DANIEL WOODRING. HOPE P. WOODRING. t/d/b/a RISING SUN COMMUNITY SERVICES, Defendants	:	

OPINION IN SUPPORT OF ORDER OF OCTOBER 16, 1984

Grine, J.

This matter comes before the Court upon Defendants' pro se Petition for Appeal Nunc Pro Tunc. Based upon the following discussion, Defendants' Petition to Appeal Nunc Pro Tunc is denied.

Factual Background

Plaintiff began this action in trespass on assumpsit on March 29, 1983. The case was tried before the Board of Arbitration, pursuant to stipulation of counsel on April 6 and April 12, 1984. The parties agreed to honor the verdict even in the event that the Arbitrators Award exceeded $10,000.00. The Board ultimately render-

ed judgement in favor of the Plaintiff in the amount of $10,219.90.

After the conclusion of the arbitration but before the end of the thirty day appeal period, the parties started negotiations in an effort to settle the matter without the need for an appeal. A praecipe for appeal was filed on May 14, 1984, but was subsequently withdrawn when the parties came near to a settlement of the matter. A verbal settlement resulted prior to the expiration of the appeal period, but was never reduced to writing during that period. When the agreement was reduced to a writing, the parties still could not come to an agreement. The expiration of the appeal period came and went without an executed settlement agreement. Defendant now files this appeal nunc pro tunc.

Discussion

The general rule is that an appeal fromm an arbitrators award must be taken no

later than thirty days after the entry of the award. Pa. R. C. P. No. 1308(a). Thereafter, a party loses his right to appeal. Defendant filed a praecipe for appeal within the thirty day limit, but withdrew it on the intuition that the parties were close to settlement. Defendants' intuition turned out to be erroneous.

Ordinarily, leave to file an appeal nun pro tunc may be granted if fraud or its equivalent prevented the party seeking appeal from appealing the award within the proper time frame. Dion v. Ford Motor Co., 64 D. & C.2d 245, Aff'd 228 Super. Ct. 743, 311 A.2d 329 (1973). The Defendants did not allege, nor is there showing of, any active or passive deception or misrepresentation, or fraudulent conduct between the parties. Since Defendants have shown no fraud, this Court is compelled to deny Defendants' Appeal Nunc Pro Tunc.

Accordingly, it is ordered that Defendants' Petition to Appeal Nunc Pro Tunc is

DENIED.

BY THE COURT:

David E. Grine

Judge

Date: January 23, 1985